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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/483,579	01/14/2000	Bruce A. Fogelson	77752	8561

7590 05/28/2004

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EXAMINER

MCALLISTER, STEVEN B

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/483,579

Applicant(s)

FOGELSON, BRUCE A.

Examiner

Steven B. McAllister

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/9/2004 has been entered.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 41-43 been renumbered 41-42.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 3-12, 14-17, 19-21, 23-32, 34, and 36-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fino et al (5,991,769) in view of Downs et al (6,226,618).

Regarding claims 1, 21 and 34, Fino et al show the customer and builder entering into a contract; providing an interface for selection of options for installation under the pre-existing contract (e.g., col. 6, lines 56-64); and receiving from the customer through the interface a selection of an option of the options provided by the contractor (note that the figures show browsing through options and selecting the option of a fireplace while an approved contract exists). It inherently shows collecting by the contractor from the customer a fee based upon the received selection made by the customer comprising the cost of the new option. Fino et al do not show that providing the options interface comprises providing a first website by a third part; that receiving from the customer through the interface comprises receiving the selections via the first website; or that the third party website provider collects a fee or commission based on the selection made by the consumer. Downs et al show providing a selection interface via a third part website; receiving customer selections through the website; and the third party website provider receiving a fee or commission based on customer selections.

As to claims 3 and 23, Fino et al in view of Downs et al show collecting the fee from the contractor.

As to claims 4-6, 24-26, 36 and 37, Fino et al in view of Downs et al show all elements of the claims.

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As to claims 7, 8, 27, 28 and 38, Fino et al in view of Downs et al show all elements of the claims except providing a link to a manufacturer and charging a commission for items sold as a result of the linking. However, it is notoriously old and well known in the art to provide a link to manufacturers and sellers of items and collecting a commission based on a sale at the manufacture's/seller's website. It would have been obvious to one of ordinary skill in the art to further modify the method of Fino et al by doing so in order to increase revenue and in order to provide more detailed information about items.

As to claims 9, 10-12, and 29-31, it is noted that Fino et al in view of Downs et al show a second website comprising additional webpages for entry of customer information by the contractor, said information comprising information regarding features and user identification information.

As to claim 14, 15, Fino et al in view of Downs et al show all elements of the claim except providing advertisements on the website and charging a fee for doing so. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the art to provide advertising on the website in order to increase revenues.

As to claim 16, Fino et al in view of Downs et al show allowing the contractor to customize the first website for his offerings since by choosing which products to offer the website has been customized.

As to claim 17, Fino et al in view of Downs et al show providing upselling options based on options selected by the customer (e.g., see Figs. 3A-C of Fino et al).

As to claim 19, Fino et al in view of Downs et al show all elements of the claim except exchanging product files between the builder and a third party contracting designer to create the product options. However, it is notoriously old and well known in the art to exchange files in between the builder and a third party designer. It would have been obvious to one of ordinary skill in the art to further modify the method by exchanging product files in the course of determining which options to offer.

As to claim 20, Fino et al in view of Downs et al show all elements of the claims except exchanging product files among a builder, supplier and manufacturer using a common file format. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to do so in order to ensure that all actors are using the same information and to ensure file portability between the actors.

As to claims 39-41, Fino et al in view of Downs et al show that the product offerings are fixtures to installed within the building.

As to claim 42, Fino et al in view of Downs et al show a virtual showroom comprising selectable images of the offerings.

Claims 2, 13, 18, 22, 32, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fino et al in view of Downs et al as applied to claims 1, 21 and 34 above, and further in view of FTD website.

As to claim 2, 13, 22, 32 and 35, it is noted that Fino et al in view of Downs et al show all elements of the claim except password protection. FTD shows providing a

password protected website. It would have been obvious to modify the method as taught by FTD in order to provide site security.

As to claims 18 and 33, Fino et al in view of Downs et al show all elements except a first password protected website providing feature information and a second site providing feature information that is open to the public. FTD shows such an architecture. It would have been obvious to one of ordinary skill in the art to further modify the method in order to provide a secure site for providing additional capabilities for those with a preexisting relationship and an open site for providing information to those without such a relationship in order that they may become customers after viewing the information.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Regarding Applicant's remarks of 4/9/2004, the examiner agrees that as amended the method claims positively recite a method in which options are selected by the user after the contract is created, and that the amended claims therefore define over the previous rejection.

Regarding the apparatus claims, it is noted that the contract is not read as a limitation since the it is not an element of the apparatus, and that an apparatus capable of providing the option selection means pre-contract is equally capable of providing contract selection post-contract. Rather than a limitation of the apparatus, it speaks to when the apparatus is used. This is simply noted here, and is moot since the new

apparatus rejections are based on the same combination as the method rejection, which selects option post K formation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven B. McAllister